LightYear DOCS

I ♥ SMSF

AM Abbott & Mourly

Division 7A

Bringing a real solution to your fingertips

8 July 2021

Kaizen

Gradual improvement on a continuous basis from a collaboration of users

改善

Kai = Change Zen = Good

Can I show you what I am building?

- **Lifetime Access** – It is your go to guide for all things SAPEP
- **Constantly Updated** – As I come across cases or changes in thinking and strategy I will build into the course
- **All resources** – I have a file with 100 different resources sitting on my desktop from ruling, PBRs, cases, legislation and strategy papers which I will put into a resource section in the course

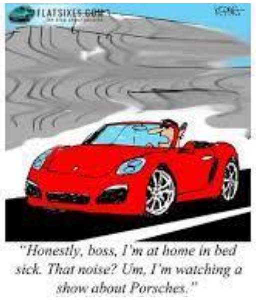
Division 7A in Practice

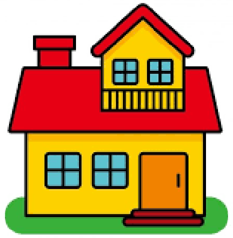
Family Protection Trust

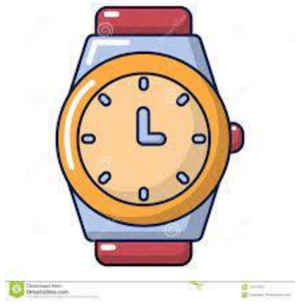
Bucket Company

Trading Company

Shareholder Payments







ATO Guidelines

LOANS BY PRIVATE COMPANIES

A private company may be taken to pay a dividend to an entity at the end of the company's income year, if it loans an amount to an entity during the year:

(a) when the entity is a shareholder or an associate of a shareholder of the company, or

(b) a reasonable person would conclude that the payment was made because the entity was a shareholder or an associate of a shareholder at some time.

The total of all dividends a private company is taken to pay under Division 7A is limited to its distributable surplus for that income year.

ATO Guidelines
TRUSTS

Division 7A applies to certain payments made by trustees to a shareholder or an associate of a shareholder of a private company where the company is presently entitled to an amount from the net income of the trust estate and the whole of that amount has not been paid by a specified date. However, the rules do not apply in all cases where there is an unpaid present entitlement.

If a private company beneficiary, in respect of an unpaid present entitlement, provides financial accommodation to the trustee of a trust, or enters into a transaction with the trustee of a trust, it will be taken to make a loan to the trustee of the trust for Division 7A purposes.

ATO Guidelines

Exclusions

A loan is not treated as a dividend:

- if it is made to another company (and they are not acting in the capacity of trustee
- if the loan has satisfied the minimum interest charge and maximum term requirement and is made or put under a written agreement before the private company's lodgment day
- if it is made to purchase shares or rights under an employee share scheme
- if it is an amalgamated loan in the year it is made and provided the required minimum yearly repayments are made in the following years

Complying Div 7A Loan

A loan that complies with the criteria set out in section 109N of the Income Tax Assessment Act 1936 is explicitly exempted from being deemed to be a dividend. The criterions are summarised below:

(a) Minimum interest rate

The interest rate of the loan for each year after the year in which the loan was made must be greater than or equal to the benchmark interest rate for each year.

The Division 7A - benchmark interest rates are published annually by the ATO.

Complying Div 7A Loan

(b) Maximum term

The maximum term for a loan secured by a mortgage over real property is 25 years. The whole of the loan must be secured by a registered mortgage over the property. When the loan is first made, the market value of the property (less liabilities secured over the property in priority to the loan) must be at least 110% of the amount of the loan.

The maximum term for any other loan is 7 years.

c) Written agreements

A loan which is made under a written agreement before the private company's lodgment date and meets the minimum interest rate and maximum term criteria, will not be treated as a dividend in the income year the loan is made.

Complying Div 7A Loan

A written agreement can be drafted to cover loans which will be made to a shareholder or their associate for a number of income years in the future.

There is no prescribed form for the written agreement. However, as a minimum, the agreement should identify the parties, set out the essential terms of the loan (that is the amount and term of the loan, the requirement to repay and the interest rate payable) and be signed and dated by the parties.

Example 4 – loan put under written agreement before lodgment day

During the 2016 income year, Frame Pty Ltd made an unsecured loan to Penelope, a shareholder of Frame Pty Ltd. The loan will not be treated as a dividend in the 2016 income year if it is put under a written agreement before the private company's lodgment day, the term of the loan is no greater than 7 years, and the rate of interest payable in subsequent income years equals or exceeds the benchmark interest rate for those years.

ATO Guidelines

(g) Amalgamated Loans

A private company will be taken to make an amalgamated loan *during an income year* if the company *makes one or more loans* to the shareholder or the associate during the year and each loan (called a 'constituent loan'):

(a) is not fully repaid before the private company's lodgement day

(b) would be treated as a dividend but for the exclusion for loans with a written agreement

(c) has the same maximum term (i.e. 25 years for a secured loan or 7 years for other loans)

The amount of the amalgamated loan is the sum of the constituent loans that have not been repaid before the lodgement day for the year of income in which the amalgamated loan is made.